

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION**

NICHOLE Y. SARTOR

Plaintiff,

vs.

**UNION PACIFIC CORPORATION,
UNION PACIFIC RAILROAD
COMPANY**

Defendant.

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No. 4:06-cv-4044

**UNION PACIFIC RAILROAD COMPANY'S MOTION TO DISMISS
PURSUANT TO FED. R. CIV. P. 12(b)(6)**

COMES NOW Defendant Union Pacific Railroad Company, and files its Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6), asking this Court to dismiss the above-entitled and numbered cause of action for failure to state a claim upon which relief can be granted. In support of its motion, Union Pacific would show the following:

I.

On October 15, 2005, a Union Pacific train, which was moving through Union Pacific's Texarkana yard, collided with a forward train awaiting departure from the yard. Plaintiff maintains that, as a result, a railcar containing a chemical (believed to be propylene gas) began to leak, causing a fire and ensuing explosion, which damaged her unoccupied real property and personal property. On June 2, 2006, Plaintiff filed the above-entitled and numbered cause of action against Union Pacific Railroad Company ("Union Pacific") and Union Pacific Corporation alleging claims of negligence, negligence per se, trespass, conversion, nuisance, and strict liability.

II.

Union Pacific files this motion asking the Court to dismiss Plaintiff's claims because the facts, as alleged in her complaint, fail to state a claim upon which relief can be granted. Attached hereto and marked as Exhibit "A" and in support hereof is a Memorandum Brief, which demonstrates that under the facts of this case Plaintiff's claims are preempted by federal law, specifically, the Federal Railroad Safety Act ("FRSA"), 49 U.S.C. § 20101, et seq., the Hazardous Material Transportation Act ("HMTA"), 49 U.S.C. § 5101, et seq., and regulations promulgated, respectively, thereunder.

WHEREFORE, PREMISES CONSIDERED, Union Pacific Railroad Company respectfully asks this Court to grant its Motion to Dismiss Pursuant to Fed. R. Civ. P 12(b)(6); dismiss with prejudice Plaintiff's claims against Union Pacific Railroad Company; and for such other and further relief as it may show itself justly entitled.

Respectfully submitted,

/s/ Sean F. Rommel

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon all counsel of record in the above action who have agreed to service by electronic filing on this 4th day of August, 2006.

/s/ Sean F. Rommel
SEAN F. ROMMEL